IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.379 OF 2003

Shri Mangirish Maharudra Laad,
Male Nurse, Inspectorate of
Factories & Boilers,
Altinho, Panaji, Goa. .... Petitioner.

Vs.

1. State of Goa
through the Secretary,
Department of Factories &
Boilers, Secretariat,
Panaji, Goa.

2. The Chief Inspector of
Factories & Boilers,
Inspectorate of Factories & Boilers,
Institute of Safety, Occupational
Health and Environment,
Altinho, Panaji, Goa. .... Respondents.

Shri D.S. Shirodkar, Advocate for the Petitioner.

Shri S.R. Rivonkar, Government Advocate for the Respondents.

CORAM : F.I. REBELLO &
P.V. HARDAS, JJ.

DATE : AUGUST 6, 2003.

ORAL JUDGMENT: (Per REBELLO, J.)

Rule. Respondents waive service. Heard forthwith.

2. The petitioner had completed three years Course of General Nursing at Government Nursing School, Panaji, Goa and passed the prescribed examination. He was awarded Diploma in General Nursing by the Maharashtra Nursing Council, Bombay and consequently, registered as a Male Nurse by the Council. Respondent No.2 had invited applications for the post of Male Nurse in the Inspectorate of Factories and Boilers.

The petitioner's name was sponsored by the Regional Employment Exchange and consequently, the petitioner was sent a call letter. It is the petitioner's case that he was interviewed by the Selection Committee for the post of Male Nurse. On 4.12.1987, by Office Memorandum, the Petitioner was offered the post of Male Nurse which the petitioner accepted. The petitioner joined duties on 1.1.1988. A formal order of appointment was issued to the petitioner on 5.1.1987. Though in the letter of appointment, it is typed as 5.1.1989, the date of appointment is 1.1.1988. It is the case of the petitioner that as he was not regularised, he went on communicating with the respondents, including respondent No.2 to regularise his services. The petitioner was informed by letter dated 27.1.2000 that the petitioner will be considered as soon as the recruitment rules of the respective posts which are pending before the Department of Personnel, were finalised and published in the Government Gazette. The recruitment rules were published on 11.5.2000.

3. In the meantime, the petitioner addressed a letter of 24.11.2000 informing that he has completed 12 years and was eligible for Time Bound Promotional Scale. The petitioner was then informed by letter of 13.12.2000 that the petitioner's qualification was not consistent with the qualifications prescribed for the post of Male Nurse as notified under the Notification No.1/4/84-PER dated 18.4.2000 published in the Official Gazette Series I, No.6 dated 11.4.2000 and therefore, his services, could not be regularised. The petitioner, thereafter, addressed a letter dated

25.1.2001 to the Maharashtra Nursing Council, Bombay requesting for permission to appear for examination after six months training. The petitioner received a letter on 24.2.2001 from the Maharashtra Nursing Council dated 13.2.2001, addressed to the Principal Institute of Nursing Education, Panaji informing that the Petitioner had undergone three years General Nursing Course of the old syllabus and that during his time of the training, Male Nurses were not allowed to undergo Midwifery training and that there was no alternate training in place of Midwifery for the male candidates and therefore, they were registered as Male Nurses only. On 26.4.2001, an O.M. was issued informing that the petitioners services could not be regularised as Male Nurse in view of the reasons already communicated under OM NO.1/55/ADM-IFB/2000/3125 dated 13.12.2000. He was also informed that his representation was forwarded to the Secretary (Factories and Boilers) for obtaining necessary advice of the Department of Personnel. The petitioner, thereafter, sent one reminder and also a legal notice, but did not receive any reply. Consequently, the present writ petition.

Respondents have not filed any reply but have relied on the Recruitment Rules as published in the year 2000 as also the administrative instruction based on which the D.P.C. considered the petitioner.

4. The issue therefore is, whether the petitioner fulfilled the eligibility requirement for appointment to the post of Male Nurse ? It is now well settled law that even if there are no recruitment

rules, framed under Articles 309 of the Constitution of India, appointments even on regular basis based on administrative instructions in force, can be made as the State's administrative power is co-extensive with legislative power. In the instant case, when the petitioner was called for interview, there were administrative instructions. The necessary qualifications for the post, were Diploma in General Nursing with three years Nursing Course from a recognised Institution. The petitioner, admittedly, had the qualification. The D.P.C. met on 1.12.1987. In the minutes which have been produced, it has been pointed out that the Recruitment Rules for the post were sent for Government Approval and based on these recruitment rules, names were called from the Employment Exchange. Names of six persons were sponsored and were called for the interview and after considering their qualifications, experience, etc., two candidates including the petitioner were found fit and who were possessing the requisite Diploma in Basic Nursing. Based on the interview, the petitioner was placed at sr. No.1 and the other candidate at sr. No.2. The selection was done by a duly constituted D.P.C. The petitioner has been continuously working in the said post from 1.1.1988, without any break. No adverse remarks have been communicated to the petitioner. Learned A.G.A. for the respondents, on queries, informed that the petitioner's ACRs otherwise are good.

5. In these circumstances, the short question is whether the petitioner because of subsequent change in the recruitment rules, can be said to be not

possessing the essential qualifications in terms of the Rules which were gazetted in the year 2000. The Recruitment Rules gazetted in the year 2000 would apply to the future appointments. The previous appointments will be governed by the administrative instructions which were in force. It is not the case of the respondents that the Committee which was constituted was not a duly constituted D.P.C. The names were called from the Employment Exchange. The petitioners met the qualifications as required under the Administrative Instructions. The petitioner was, therefore, duly qualified and also selected by a duly constituted D.P.C. In the light of that, the appointment of the petitioner will have to be held as legal and considering the long period of appointment though styled as ad hoc, when in fact, it was on a regular basis. That being the case, we are of the opinion that the petition will have to be allowed in so far as that relief is concerned.

6. In so far as the T.B.P.S. the petitioner will be entitled to be considered for the T.B.P.S. on completing 12 years in the post provided he meets other requirements for grant of the same. In the light of that the following Order.

7. Rule is made absolute in terms of prayer Clause (a). In so far as T.B.P.S., the petitioner if found eligible, the same to be given to him, within three months from today. Rule accordingly. No order as to costs.

F.I. REBELLO, J.

P.V. HARDAS, J.

ssm.